

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-092688

06/15/2012

COMMISSIONER ALYSSON H. ABE

CLERK OF THE COURT
L. Hart
Deputy

IV-D ATLAS NO. 000668378600
STATE OF ARIZONA, EX REL, DES
KRISTEN LYNN GWYTHYER

KRISTEN LYNN GWYTHYER
2505 E WILLIAMS FIELD RD # 102
GILBERT AZ 85295

AND

DERECK ADAM MISCHER

ERIC L OVERSTREET

AG-CHILD SUPPORT-EAST VALLEY
OFFICE
JUDGE HANNAH

UNDER ADVISEMENT RULING

On June 12, 2012, an Evidentiary Hearing was held on the State's *Petition to Establish Judgment on Arrears* filed on December 13, 2011. Following the Evidentiary Hearing, the Court took this matter under advisement. The Court has since reviewed the testimony presented, the exhibits introduced into evidence, the case history and pleadings filed, and the arguments of Counsel. The Court now makes the following findings and enters the following orders:

SUMMARY OF THE CASE

On February 16, 2011, Petitioner/Mother, Kristen Gwyther (hereinafter referred to as "Mother") obtained a (Default) Decree of Legal Separation of a Non-covenant Marriage with Children (hereinafter referred to as "Decree"). The Decree set Respondent/Father's (hereinafter referred to as "Father"), monthly child support obligation at \$601.76 commencing February 1, 2011; and set Father's monthly spousal maintenance obligation at \$2,000.00 commencing March 1, 2011.

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LET THE RECORD REFLECT that the Court acknowledges the difficulties and hardship that any family endures during the time of a separation and dissolution of marriage. In this case, Mother was unemployed, had multiple knee surgeries, expressed feelings of abandonment, and believed Father was not providing her with sufficient money to pay for bills and provide for the child that the parties have in common. Father testified that Mother never contacted him regarding her request for a legal separation. Father also expressed concerns over whether Mother would help foster his continued relationship with the child. However, above all at things heard and considered, the Court heard testimony and reviewed numerous exhibits pertaining to money. The purpose of the hearings held, pursuant to the State's action, was to determine what judgment, if any, should be entered against Father for money owed to Mother for past due child support and spousal maintenance.

THE DISPUTED ISSUES

1. Whether Father made direct payments to Mother for child support and/or spousal maintenance.
2. If the Court finds that Father made direct payments, the dollar amount that Father should receive credit for regarding child support and or spousal maintenance.

As to the first issue,

THE COURT FINDS that Father made direct payments to Mother for child support and spousal maintenance. Some of the supporting evidence of Father's direct payments were in the form of checks written by Father to Mother for "child support/spousal" or "alimony[e]y." These checks were cashed and the back of the checks bear Mother's signature. Other supporting evidence includes emails between the parties wherein Mother requested that Father pay her directly¹.

¹ One email in particular sent on July 9 2011, from queenkristy@msn.com to kingdereck04@yahoo.com reads in part: "I asked you for direct deposit from your check direct to an account for me and I told you I would only accept partial payments based on getting the payments the exact day you are paid. You changed that. Payment is due the first of every month in the amount of 2601.88. I told you no personal checks...you did it anyway, an now once again...your changing it. Don't worry you can pay the clearing house as I filed to have your wages garnished so you are no longer jacking us around with changing you mind every 5 sec. However, you need to pay me direct and on time until that takes place so Harley has a place to live and gets the care he needs." The same email later also reads in part "All this information you claim you get from the clearinghouse is crap. You can pay direct to me and then there are no problems. but you can not seem to do that without problem."

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As to the second issue,

THE COURT FINDS that prior to making his payments through the Support Clearinghouse, Father used various forms of direct payments to Mother, including, money orders, personal checks, and direct deposits with multiple banking institutions.

THE CAPITAL ACCOUNT

THE COURT FINDS that Father is seeking credits for direct payments for money that he deposited into a joint bank account that was shared at that time by Mother and Father. The Court was presented with evidence of Father's employer, Union Pacific, made direct deposits into this joint bank account.

THE COURT FURTHER FINDS that Mother also paid community debts from the joint account. To that end, the Court finds that Father should NOT be credited for any of the direct deposits into the joint account with Capital.

MONEY ORDER

THE COURT FINDS that on March 11, 2011, Father issued a money order to Mother in the amount of \$1,000.00 for "CHILD SUPPORT/SPOUSAL."

THE COURT FURTHER FINDS that Mother cashed and signed said money order.

IT IS THEREFORE ORDERED that Father shall receive credit in the amount of \$1,000.00. The child support (\$601.76) shall be deducted first, with the remaining balance (\$398.24) to be applied toward spousal maintenance.

THE CHASE ACCOUNT

THE COURT FINDS that Father's employer, Union Pacific, made direct deposits into Mother's personal account with Chase. To that end, Father presented evidence of his employer's direct deposits on:

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Date of Deposit	Amount
3-25-11	\$1,432.95
4-08-11	\$1,878.81
4-25-11	\$1,443.12
5-10-11	\$1,700.00
5-25-11	\$1,380.27
Total Chase Deposits	\$7,835.15

Based upon the testimony presented at hearings, the Court's review of the exhibits and the credibility of the parties,

THE COURT FURTHER FINDS that the above-listed direct deposits into Mother's account were made for purpose of child support and spousal maintenance.

IT IS THEREFORE ORDERED that Father shall be credited with the Chase deposits totaling \$7,835.15 for the period of time from March 25, 2011 through May 31, 2011. The credit shall apply first to the monthly child support obligation with the remaining balance being applied toward spousal maintenance.

THE US BANK ACCOUNT

THE COURT FINDS that while residing in Reno, Nevada, Father maintained a checking account with US Bank.

THE COURT FURTHER FINDS that Father issued Mother the following checks from US Bank:

Date Issued	Amount	Date Cashed	Signed by Kristen Guyther	Check's Memo Section
6/10/2011	\$1,300.88	6/14/2011	Yes	"child support 601.76/alimony[e]y 699.12" "\$1300.88 Alimon[e]y"
6/25/2011	\$1,300.88	Illegible	Yes	
8/10/2011	\$1,000.00	Illegible	Yes	"alimony[e]y"
8/25/2011	\$875.00	Illegible	Yes	"alimony[e]y"
Total Chase	\$4,476.76			

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THE COURT FURTHER FINDS that the above checks issued from Father's US Bank account totaling \$4,476.76 were issued for the purpose of Father's child support and spousal maintenance obligations.

IT IS THEREFORE ORDERED that Father shall receive credit in the amount of \$4,476.76 for payments made directly to Mother (\$601.76 for child support and \$3,875.00 for spousal maintenance) for the time period from June 1, 2011 through August 31, 2011.

ED BERLANGA

Father seeks credit in the amount of \$1,000.00 for a direct payment made to Mother for spousal maintenance into an account allegedly belonging to a person identified as Ed Berlanga. Father testified at hearing that he does not personally know an Ed Berlanga, but that Mother directed Father to deposit her July 2011 spousal maintenance payment be into this person's account. Mother testified at hearing that she never heard of Ed Berlanga, nor did she ever request that Father deposit monies into an account belonging to Ed Berlanga.

In addition, the Court has considered Father's Exhibit 9 (a copy of a Bank of America customer receipt dated July 12, 2011, for a deposit in the amount of \$1,000.00, with the words "ED Berlanga for Kristy allimoney").

THE COURT FINDS that Father directly deposited \$1,000.00 into Ed Berlanga's account for Mother's spousal maintenance.

IT IS THEREFORE ORDERED that Father receive credit in the amount of \$1,000.00 for payment made directly to Mother for spousal maintenance, through Ed Berlanga, for the time period from July 1, 2011 through July 31, 2011.

IT IS ORDERED directing the Attorney General to provide an updated arrears calculation/payment history and to provide copies of same to each of the parties and this division.

Based upon the Arrears Calculation Report, the Court may set this matter for Review Hearing to address Father's payment on arrears only.

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The Court takes judicial notice of the following:

On January 30, 2012, Father filed his *Verified Petition for Order to Show Cause Re: Modification of Child Support and Spousal Maintenance*.

On April 6, 2012, Mother filed her *Response to Petition for Order to Show Cause Re: Modification of Child Support and Spousal Maintenance –and- Counter-Petition to Enforce Child Support and Spousal Maintenance and Finding of Contempt and Reimbursement of Non-Medical Expenses*.

LET THE RECORD REFLECT that Mother's Response is comprised of two separate parts:

- A. A Response to Father's *Verified Petition for Order to Show Cause Re: Modification of Child Support and Spousal Maintenance*; and
- B. An enforcement action.

As to part A, this matter is currently set for an Evidentiary Hearing before the Judge Hannah on August 6, 2012 at 1:30 p.m.

As to part B, per Judge Hannah's minute entry dated May 14, 2012, this Court will address Mother's enforcement component. To that end, Mother seeks to enforce payment of Father's child support and spousal maintenance obligations, and enforcement of unreimbursed medical expenses.

Mother's enforcement action by way of a Response to Father's Motion is improperly filed. If Mother seeks enforcement action, Mother must follow the proper procedure and file a Petition to Enforce. Further, as to Mother's unreimbursed medical expense claim, it does not indicate the amount she believes Father owes nor does it include the "Attachment C" as would be found on a *Petition to Enforce Unreimbursed Medical Expenses*.

Finally, the Court also notes that there is no indication in the court record that Father has been served with Mother's enforcement action. Until Mother properly files a petition and effectuates service, this Court takes no further action on Mother's enforcement request. Mother is directed to the Self-Service Center of the Maricopa County Superior Court for the appropriate forms and instructions on filing a petition to enforce.

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Self-Service Center, 201 West Javelina, Mesa, AZ. Automated telephone number: (602) 506-SELF. (Provides a variety of forms and instructions.) The parties may also obtain various forms from the Self-Service Center website at:
<<http://www.superiorcourt.maricopa.gov/ssc/sschome.html>>

A clerical error having been made,

IT IS ORDERED nunc pro tunc correcting the first paragraph of the IV-D Hearing – Matter Under Advisement minute entry dated June 12, 2012 to reflect that the State was represented by Assistant Attorney General, Jennifer Mihalovich, who was present on behalf of Kathie A. Pearson.

The balance of the June 12, 2012 minute entry remains the same.

The Court has reviewed Respondent/Father's *Application and Affidavit for Attorney Fees Pursuant to China Doll Affidavit* filed on June 20, 2012.

IT IS HEREBY ORDERED denying Father's *Application and Affidavit for Attorney Fees Pursuant to China Doll Affidavit*.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.